

November 7, 2003

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L03P0017**
Proposed Ordinance No. **2003-0431**

HERITAGE

Preliminary Plat Application

Location: Southwest corner of the intersection of Southeast 224th Street and
272nd Avenue Southeast

Applicant: Miller and Miller Construction, *represented by*
Jeff Potter
28935 – 230th Avenue Southeast
Black Diamond, WA 98010
Telephone: (425) 432-3284

King County: Department of Development and Environmental Services
Land Use Services Division, *represented by*
Kim Claussen
900 Oakesdale Avenue Southwest
Renton, WA 98055-1219
Telephone: (206) 296-7167
Facsimile: (206) 296-6728

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions
Examiner's Decision:	Approved, subject to conditions

EXAMINER PROCEEDINGS:

Hearing Opened:	November 6, 2003
Hearing Closed:	November 6, 2003

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. **General Information:**

Applicant/Owner: Miller & Miller Construction
Attn: Mike Miller
PO Box 1308
Maple Valley, WA 98038
425- 433-1555

Engineer: Barghausen Consulting Engineers
18215 72nd Avenue Southeast
Kent, WA 98032
425-251-6222

STR: 13-22-06

Location: The site is located on the southwest corner of the intersection of SE 224th Street and 272nd Avenue Southeast

Zoning: RA-5
Acreage: 36.27 acres
Number of Lots: 7 lots
Density: Approximately 1 unit per five acres
Lot Size: Ranges from approximately 1.7 to 3.1 acres
Proposed Use: Single-family detached dwellings
Sewage Disposal: Individual On-site Septic
Water Supply: Cedar River
Fire District: King County District #43
School District: Tahoma School District
Complete Application Date: May 29, 2003

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the November 6, 2003 public hearing are found to be correct and are incorporated herein by reference. The LUSD staff recommends approval of the application, subject to conditions.
3. Miller and Miller Construction has submitted a preliminary plat application to divide 36 acres into 7 lots for single-family residential development. The site lies in the Rural Area east of Maple Valley and is dominated by an interconnected network of wetlands. The plat access road will cross these wetlands in a couple of narrow locations for which the Applicant will mitigate the impacts.
4. The primary issue of concern with respect to the review of this plat application is focused on the downstream drainage conveyance system. Surface flows will exit the site near its southeast corner and travel eastward into wetland 67, a closed depression. Due to constraints affecting the overflow at the south end of wetland 67, during major storm events the wetland may flood and

inundate nearby residential properties. The King County Surface Water Design Manual specifies level 3 flow control as mitigation for proposals that drain to closed depressions where the area to be developed with impervious surfaces constitutes less than 10% of the depression drainage basin. The drainage basin area for wetland 67 has been estimated by the Applicant's engineer at 606 acres, and owing to the low intensity of site development, it is expected that only 1.66 acres of the site will be covered with impervious surface. Thus, the impervious surface area proposed by the Heritage plat comprises less than 1% of the wetland 67 drainage basin.

CONCLUSIONS:

1. If approved subject to the conditions imposed below, the proposed subdivision makes appropriate provision for the public health, safety and welfare; serves the public use and interest; and meets the requirements of RCW 58.17.110.
2. The conditions of approval imposed herein, including dedications and easements, will provide improvements that promote legitimate public purposes, are necessary to serve the subdivision and are proportional to its impacts; are required to make the proposed plat reasonably compatible with the environment; and will carry out applicable state laws and regulations and the laws, policies and objectives of King County.

DECISION:

The preliminary plat application for Heritage, as revised and received on August 22, 2003, is APPROVED, subject to the following conditions of final approval:

1. Compliance with all platting provisions of Title 19A of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density requirements of the RA-5 zone classification. All lots shall meet the minimum dimensional requirements of the RA-5 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
5. The applicant must obtain the approval of the King County Fire Protection Engineer certifying the adequacy of the fire hydrant, water main, and fire flow to meet the standards of Chapter 17.08 of the King County Code.
6. Prior to final recording, the applicant shall obtain Health Department approval for the individual on-site septic systems proposed. Note that seasonal review may be necessary.
7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as

shown on the preliminary approved plat. Preliminary review has identified the following

conditions of approval, which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.

- a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
8. The stormwater detention facility shall be designed to the Level 3 flow control (plus a 20% safety factor) pursuant to the 1998 King County Surface Water Design Manual(KCSWDM), unless otherwise approved by DDES. The facility shall also be designed at a minimum to the basic water quality menu.
 9. The 100-year floodplain for all onsite wetlands or streams shall be shown on the engineering plans and the final recorded plat per the 1998 King County Surface Water Design Manual (KCSWDM).
 10. The following road improvements are required to be constructed pursuant to the 1993 King County Road Standards(KCRS):
 - a. The internal access road shall be improved to the rural minor access street standard.
 - b. FRONTAGE: The frontage along SE 224th Street shall be improved to the rural neighborhood collector standard.
 - c. Modifications to the above road conditions may be considered pursuant to the variance procedures in Section 1.08 of the KCRS.
 11. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
 12. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option

is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.

13. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
14. The proposed subdivision shall comply with the Sensitive Areas Code as outlined in KCC 21A.24. Permanent survey marking, and signs as specified in KCC 21A.24.160, shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
15. Preliminary plat review has identified the following specific sensitive areas requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the applicant.

Wetlands

- a. Class 2 wetland(s) shall have a minimum buffer of 50-feet, measured from the wetland edge.
- b. The wetland(s) and their respective buffers shall be placed in a Sensitive Area Tract (SAT).
- c. Buffer averaging may be proposed, pursuant to KCC 21A.24.320, provided the total amount of the buffer area is not reduced and better resource protection is achieved, subject to review and approval by a DDES Senior Ecologist.
- d. A minimum building setback line of 15 feet shall be required from the edge of the tract.

Alterations to Streams or Wetlands

- e. If alterations of streams and/or wetlands are approved in conformance with KCC 21A.24, then a detailed plan to mitigate for impacts from that alteration will be required to be reviewed and approved along with the plat engineering plans. A performance bond or other financial guarantee will be required at the time of plan approval, to guarantee that the mitigation measures are installed according to the plan. Once the mitigation work is completed to a DDES Senior Ecologist's satisfaction, the performance bond may be replaced by a maintenance bond for the remainder of the five-year monitoring period to guarantee the success of the mitigation. The applicant shall be responsible for the installation, maintenance and monitoring of any approved mitigation. The mitigation plan must be installed prior to final inspection of the plat.
16. The following note shall be shown on the final engineering plan and recorded plat:

RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE AREAS AND BUFFERS

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

17. The applicant has proposed a 50-foot landscape easement along the northern portion of the site (adjacent to 224th Ave. SE). Details regarding restrictions, ownership and maintenance of this easement shall be shown on the engineering plans and final plat.
18. Tract B: The applicant has proposed Tract B/Community Open Space. Notes regarding use, restrictions, ownership and maintenance of Tract B (Community Open Space) shall be shown on the engineering plans and final plat.
19. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the private road, open space and sensitive area tract(s).
20. Street trees shall be provided as follows (per KCRS 5.03 and KCC 21A.16.050):
 - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along Road A and SE 224th Street. Spacing may be modified to accommodate sight distance requirements for driveways and intersections. Existing trees may be utilized for street trees, as deemed appropriate by DDES.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.

- c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
- d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
- e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
- f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
- g. The applicant shall contact Metro Service Planning at 684-1622 to determine if SE 224th St. is on a bus route. If so, the street tree plan shall also be reviewed by Metro.
- h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

ORDERED this 7th day of November, 2003

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 7th day of November, 2003, to the following parties and interested persons:

Barghausen Consulting Engr., Inc.
Hal Grubb
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NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before November 21, 2003***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before November 28, 2003***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE NOVEMBER 6, 2003, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L03P0017.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Kim Claussen and Bruce Whittaker, representing the Department; and Jeff Potter, representing the Applicant.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 DDES file no. L03P0017
- Exhibit No. 2 DDES Preliminary Report to the Hearing Examiner for the 11-06-03 hearing
- Exhibit No. 3 Application for Land Use Permits received 05-29-03
- Exhibit No. 4 SEPA Checklist, received 05-29-03
- Exhibit No. 5 DDES Determination of Non-Significance issued 09-19-03
- Exhibit No. 6 Affidavit of posting indicating a posting date of 07-10-03, received by DDES on 07-14-03

- Exhibit No. 7 Preliminary plat map (1 pg), received 08-22-03
- Exhibit No. 8 Wetland evaluation by Alder NW, received 05-29-03
- Exhibit No. 9 Assessor's maps (4) for NE 13-22-6, SW 12-22-6, NW 13-22-6 and SE 12-22-6
- Exhibit No. 10 Level 1 Off-site Drainage Analysis by Barghausen Consulting Engineers, Inc., received 05-29-03
- Exhibit No. 11 Conceptual Drainage Plan (2 pgs) by Barghausen Consulting Engineers, Inc.
- Exhibit No. 12 Downstream Drainage Map – color annotated by Bruce Whittaker
- Exhibit No. 13 Preliminary Detention Calculations by Barghausen Consulting Engineers, Inc., received 08-22-03
- Exhibit No. 14 Revised recommendation no. 20.a.
- Exhibit No. 15 Additional drainage data

SLS:gao
L03P0017 RPT